IN THE

Supreme Court of The United States

OCTOBER TERM, 1976

No. 76-164

SANTOS CAMPOS CAMPOS,
Petitioner,
v.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioner Santos Campos Campos respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on May 10, 1976.

OPINION BELOW

The opinion of the Court of Appeals were not reported since the case was dismissed on a Motion to Dismiss by Respondent. Exhibit "A" is the order granting respondent's motion to dismiss. Exhibit "B" is an order denying petitioner his Petition for a Rehearing. Exhibit "C" is a Stay of Mandate while applying for a Writ of Certiorari to this Court.

JURISDICTION

The judgment of the Court of Appeals was entered on May 10, 1976. Rehearing was denied on June 7, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Is a permanent resident alien who pleads guilty to a crime protected under the umbrella of *Boyken* v. *Alabama* against deportation proceedings for the same crime he pled guilty to?

2. Is finality of conviction" for deportation purposes limited only to appellate relief or may it include Writ of Coram Nobis?

3. May deportation be cruel and unusual punishment in some cases or is deportation not cruel and unusual punishment under any circumstances?

4. Is Rule 5 of the Rules of the Supreme Court of the United States in violation of the 6th Amendment to the United States Constitution?

STATUTE INVOLVED

The statute involved is Section 241(a)(11) of the Immigration and Nationality Act of 1952.

STATEMENT

This case was initiated by the Immigration and Naturalization Service, hereinafter referred to as the I.N.S., on January 19, 1973 by the issuance of a Warrant of Arrest of Alien, issued by Deputy District Director Emil H. Pullin. Petitioner at that time was serving a sentence for conviction of California's Health and Safety Code Section 11500.5, in California State Prison, San Quentin, California. An Order to Show Cause and Notice of Hearing was also issued on January 19, 1973 by the I.N.S. Petitioner was ordered to appear before a Special Inquiry Officer in San Francisco to show cause why he should not be deported under Section 241(a)(11) of the Immigration and Nationality Act of 1952. The above order to show cause was not served until May 29, 1975 on the petitioner. On June 16, 1975 a hearing was heard at the I.N.S. District Office in San Francisco, California, and petitioner was ordered deported as charged. The Board of Immigration Appeals in Washington, D.C., dismissed the appeal of the above decision on August 29, 1975. On October 22, 1975 petitioner was sent notice to surrender himself for deportation on November 5, 1975. Petitioner filed a Petition for Review of Deportation Order on November 3, 1975. Respondent filed a Motion to Dismiss and it was granted on May 10, 1976. A petition for rehearing was denied on June 7, 1976. A stay of mandate was issued while petitioner applied to this Court for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

1. There are millions of legal permanent resident aliens in the United States. This is a far-reaching decision affecting many people if this Court grants Certiorari. When a citizen of the United States or a permanent resident alien commits a crime he is locked into the criminal justice system. In this system plea bargaining is a fact of life and it is no secret that the great majority of criminal cases are adjudicated by such a process.

Doubts about the constitutionality of plea bargaining were resolved in 1970. *Brady* v. *United States,* 397 U.S. 742. The *Brady* case points to the exchange of benefits between the defendant and the state to justify plea bargaining. The defendant receives lesser punishment and the state saves the cost of trial.

This court made a tremendous impact on guilty pleas in 1969. *Boyken* v. *Alabama,* 395 U.S. 238. This case states that a waiver, preceding a guilty plea, should not be treated as valid unless there is an affirmative showing on the record that it is intelligent and voluntary. This requires, specific waivers of right to trial by jury, right to avoid self-incrimination and the right to confront one's accusers.

Today the Boyken mandate is heard throughout the courts of the land. Where the record shows that the defendant is aware of his rights to trial and confrontation and against self-incrimination, *and is aware of the penalties resulting from his plea,* the waiver will be upheld despite the absence of the "incantation of a prepared litany" by the judge to the accused regarding those rights. *People* v. *MacMillen,* 15 Cal.App.3d 576, 93 Cal. Rptr. 296 (1971) (Emphasis ours).

However thousands of permanent resident aliens like petitioner who are caught up in the criminal justice system are not "aware" of the collateral penalty of deportation that results from his plea of guilty. Moreover, the cruel irony for the lawful permanent resident involved in the plea bargaining process is that the lesser punishment he receives temporarily per *Brady,* will be catastrophic at a later date when deportation proceedings are initiated against him with the end result of deportation-banishment from this country, without recourse.

If a permanent resident alien was "aware" of the possibility of deportation for his plea of guilty to a misdemeanor or a felony, he would fight tooth and nail to get that indictment or complaint dismissed.

Petitioner feels this court did not intend such a twisted result would arise from the *Brady* and *Boyken* case but rather that *Boyken's* umbrella covers permanent resident aliens as well as citizens. To think otherwise would lead to a conflict with the 14th amendment Equal Protection clause. This Court should clarify this to the millions of lawful aliens in this country.

2. There seems to be a conflict between the 3rd and 7th circuits, or at least an illogical conclusion on the issue of whether a writ of coram nobis "finality of conviction" for purposes of deportation.

A writ of coram nobis, when successfully applied serves to remove the sword of deportation since it wipes out the conviction. *Sankow* v. *I.N.S.,* 314 F.2d 34 (3d Cir. 1963). This is true even if the court's action on the writ was for the purpose of avoiding deportation. *Matter of O'Sullivan,* 10 I.N. 320.

A more recent case, *Will* v. *I.N.S.,* 447 F.2d 529 (7th Cir. 1971), holds that when a verdict of guilty is returned and you appeal, you may not be deported, until you exhaust your appellate remedies, regardless of the extremely questionable likelihood that the alien would prevail on appeal. This case stated explicitly that a writ of coram nobis was not in the same category and "final" for deportation purposes.

The 7th Circuit Court of Appeals leaves out the vast majority of people and the reality of the criminal justice process where plea bargaining is a fact of life.

A person who pleads guilty has no other avenue left since a guilty plea cannot be appealed, except for a writ of coram nobis. This avenue should be left open for the majority, like petitioner, who are caught up in deportation proceedings.

3. A recent District Court found deportation to be cruel and unusual punishment. Although reversed by the 7th Circuit Court of Appeals, this raises anew the question of whether deportation is cruel and unusual punishment in some cases.

In *Liegge* v. *I.N.S.*, 359 F.Supp. 17 (1975), the Court found that in particular circumstances to prevent inequitable and unjust results, the eighth amendment may be invoked by the courts. The 7th Circuit Court of Appeals reversed that decision soon thereafter, in an unpublished order not to be cited per circuit rule 28. However this Court agreed that this was a hardship case and that the government should afford petitioner any administrative remedy that may still be available in accordance with the representations of the Assistant United States Attorney at the oral argument.

Even this is a marked contrast with the ancient holding of this Court that deportation is not a punishment. *Fong Yue Ting* v. *U.S.*, 149 U.S. 698 (1893).

Petitioner feels this blanket harsh rule should be changed to allow the lower courts to see if there is indeed hardship. Petitioner has lived in this country for 28 years, has seven United States citizen children, and a United States citizen wife. It is one thing to uproot a sapling of one year, another to uproot a tree that has been planted for 28 years. Such an abrupt uprooting disturbs and destroys the environment around it.

4. Rule 5 of the Rules of the Supreme Court is in violation of the Sixth Amendment right to counsel.

In order to petition for certiorari you must be a member of the United States Supreme Court Bar. To be a member you must be a member of a state bar for three years and then fly to Washington to be admitted to the Bar. This procedure leaves out the majority of lawyers who do not have the time period or the money to fly to Washington. It leaves

a highly select group of individuals, which are difficult to find since lawyers cannot advertise. How is one to know whether a lawyer is a member of the Supreme Court Bar? Pro Se does not fill the need for representation since most are not lawyers who petition in Pro Se.

Membership to a State Bar or to the Federal Courts should be sufficient. Petitioner respectfully asks this Court to consider this for the future..

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

SANTOS CAMPOS

SANTOS CAMPOS CAMPOS

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In Pro Se

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1976

No. 76-164

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vs.

IMMIGRATION AND NATURALIZATION SERVICE,
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APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Appendix A

United States Court of Appeals
for the Ninth Circuit

No. 75-3400

SANTOS CAMPOS CAMPOS,	*Petitioner,*
VS.	
IMMIGRATION AND NATURALIZATION SERVICE,	*Respondent.*

[Filed May 10, 1976]

ORDER

Before: Hufstedler and Choy, Circuit Judges

Upon due consideration of respondent's motion to dismiss, the decision of the Board of Immigration Appeals in affirmed. *Van Dijk v. INS,* 440 F.2d 798 (9th Cir. 1971); *Will v. INS,* 447 F.2d 529 (7th Cir. 1971).

/s/ Shirley Hufstedler
/s/ Herbert Y. C. Choy

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Appendix B

United States Court of Appeals
for the Ninth Circuit

No. 75-3400

SANTOS CAMPOS CAMPOS,
Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

[Filed June 7, 1976]

ORDER

Before: Hufstedler and Choy, Circuit Judges

Upon due consideration, the motion for reconsideration is denied, and the suggestion for rehearing en banc is rejected.

/s/ Shirley Hufstedler
/s/ Herbert Y. C. Choy

No. 76-164

In the Supreme Court of the United States

OCTOBER TERM, 1976

SANTOS CAMPOS CAMPOS, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
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Washington, D.C. 20530.

In the Supreme Court of the United States

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No. 76-164

SANTOS CAMPOS CAMPOS, PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner attacks an order of deportation on the grounds that (1) the underlying criminal conviction, upon which the order was based, was defective; (2) the conviction is not final because of the possibility of his petitioning for a writ of error *corum nobis*; and (3) the order of deportation constitutes cruel and unusual punishment.

On July 28, 1972, petitioner, a citizen of Mexico, pleaded guilty in California state court to a charge of possessing heroin for sale, in violation of Section 11500.5 of the Health and Safety Code of California.[1] The Immigration and Naturalization Service thereafter instituted deportation proceedings against petitioner. At a hearing

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[1]We are lodging with the Clerk of this Court copies of official documents introduced at petitioner's deportation hearing, the transcript of that hearing, and the decisions of the immigration judge and the Board of Immigration Appeals.

before an immigration judge on June 16, 1975, petitioner, represented by counsel, acknowledged that he had entered the United States as an immigrant in August 1958 and that he had been convicted in state court of possessing heroin for sale. When petitioner's counsel attempted to discuss the underlying conviction, the immigration judge stated that he did not have the authority to consider challenges to petitioner's conviction in the context of a deportation proceeding but that petitioner could seek relief from the conviction in state court. The judge thereafter ruled that petitioner was deportable under Section 241(a)(11) of the Immigration and Nationality Act, 66 Stat. 206, as amended, 8 U.S.C. 1251(a)(11). The Board of Immigration Appeals dismissed petitioner's appeal from the deportation order. The court of appeals affirmed (Pet. App. A), and denied a petition for rehearing with a suggestion for rehearing *en banc* (Pet. App. B).

None of the contentions made by petitioner in this Court entitles him to relief from the deportation order. Petitioner evidently claims that when he pleaded guilty in state court to having possessed heroin for sale he was not made aware of the possibility of his consequent deportation. It is settled, however, that a person entering a guilty plea cannot challenge the validity of that plea in the context of a deportation proceeding. *E.g., Rassano* v. *Immigration and Naturalization Service,* 377 F. 2d 971, 974 (C.A. 7); *Giammario* v. *Hurney,* 311 F. 2d 285, 287 (C.A. 3). The fact that petitioner may yet be able collaterally to challenge his guilty plea on a writ of error *corum nobis*—which provides relief "of the same general character as [relief] under 28 U.S.C. §2255" (*United States* v. *Morgan,* 346 U.S. 502, 505-506 n. 4)—does not affect the finality of his state conviction for deportation purposes. See *Oliver* v. *Immigration and Naturalization Service,* 517 F. 2d 426, 428 (C.A. 2), certiorari denied, 423 U.S. 1056; *Aguilera-Enriquez* v. *Immigration and Naturalization Service,* 516 F. 2d 565, 570-571 (C.A. 6), certiorari denied, 423 U.S. 1050.

Finally, an order of deportation is civil, rather than penal, in nature; thus, petitioner cannot avail himself of the Eighth Amendment's prohibition against cruel and unusual punishment. As Mr. Justice Holmes stated in *Bugajewitz* v. *Adams,* 228 U.S. 585, 591, in which this Court held that the constitutional prohibition against *ex post facto* laws does not apply to deportation proceedings:

> It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the Government to harbor persons whom it does not want.

See also *Woodby* v. *Immigration and Naturalization Service,* 385 U.S. 276, 285; *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 594.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.

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[2]Petitioner also "asks this Court to consider * * * for the future" (Pet. 7) a relaxation of admission requirements to permit any attorney to practice before the Court who has been admitted to practice before any state or federal court. To the extent that petitioner is advancing this suggestion as a basis for relief here, it must be rejected. Petitioner has not shown that this Court's present admission requirements are unreasonable or that such requirements (which include means for obtaining permission to represent a client *pro hac vice*) have forced him to proceed in this Court *pro se.*

DOJ-1976-11